September 2, 2003

OFFICE OF THE HEARING EXAMINER
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REPORT AND DECISION ON SHORT PLAT APPEAL

SUBJECT: Department of Development and Environmental Services File No.
L02S0015/L02CI003

JEFF MCCANN/MCKINLEY, LLC
Short Plat and Code Interpretation Appeals

Location: Northerly Side of Retreat-Kanaaskat Road, Beginning Approximately 1,800 feet Northeasterly of 312th Way Southeast

Applicant/: Appellant
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SUMMARY OF DECISION/RECOMMENDATIONS:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal

EXAMINER PROCEEDINGS:

Hearing Opened:	August 26, 2003
Hearing Closed:	August 26, 2003

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. In 2002, Jeff McCann and McKinley, LLC filed a short plat application with King County DDES to subdivide approximately 50 acres into 4 lots within the RA 10 zone. The property lies north of Southeast Retreat-Kanaskat Road in the Rural Area located east of Black Diamond. As a consequence of a disagreement with DDES staff over the number of new lots permitted on this parcel, the Applicant requested a code interpretation of KCC 19A.08.180 as it applies to the subject property. A final code interpretation and a preliminary decision denying the short plat application were issued by DDES on May 23, 2003. Based on its final code interpretation, DDES ruled that no more than 2 lots could be legally created on the Applicant's parcel consistent with the provisions of KCC 19A.080.180. Mr. McCann and McKinley, LLC have filed a timely appeal of the short plat denial and the code interpretation upon which it is predicated. While final DDES code interpretations are not generally subject to further administrative review, KCC 2.100.050 permits review of a code interpretation that relates to a development application pursuant to the administrative appeal provisions that apply to the underlying application itself.

2. The essential facts are not in dispute. In 1996 the Jack McCann Co., Inc. owned 12 contiguous parcels on approximately 157 acres that spanned the Retreat-Kanaskat Road. In this vicinity the Retreat-Kanaskat Road is the dividing line between the Forestry and RA 10 zones, with the Forestry portion lying southwest of the road and the RA 10 portion to the northeast. Within the McCann holding 5 parcels, including a tiny but legally distinct sliver comprising 18 square feet in area, were located on 42.7 acres within the Forestry zone. The remaining 7 parcels comprising 115 acres lay to the northeast within the RA 10 zone.

3. In 1996 the Jack McCann Co. obtained King County approval of a boundary line adjustment that rearranged the lot lines among the 12 parcels. After the adjustment the number of parcels within each zone remain the same, with 5 in the Forestry district and 7 in the RA 10 district. The 18 square foot sliver tract originally denominated lot L was deleted from the new configuration, and a new lot L was created on the eastern half of the property in the RA 10 zone with a total area of 67.07 acres.

4. In 1997 this new lot L underwent a large lot segregation to create 3 lots each in excess of 20 acres. Shortly thereafter in 1998, a boundary line adjustment was approved for the former lot L that shrunk 2 of the lots created by the exempt segregation to under 9 acres each, leaving a nearly 50 acre remainder as lot C. Lot C is the parcel that was sought to be re-divided within the 2002 short plat application.

5. The County subdivision regulations were rewritten in 1999 as codified within KCC Title 19A. Among the many revisions that occurred were tighter restrictions on boundary line adjustments and large lot exempt segregations, as well as a provision that restricted density increases in the Rural Area by disallowing the creation of an extra lot on a parcel fragment exceeding 50% of the base density requirement for the zone as previously permitted under the so-called "rounding up rule". Title 19A also contained as a new provision KCC 19A.08.180, which reads as follows:

> "**Circumvention of zoning density prohibited**. A legal lot, which has been subject to a boundary line adjustment or created through a legally recognized land segregation process and is of sufficient land area to be subdivided at the density applicable to the lot, may be further segregated. However, such further segregation of the lot shall not be permitted if the total number of lots contained within the external boundaries of the lot subject to the original boundary line adjustment or the total number of lots contained within the external boundary of the parcel subject to the original land segregation, exceed the density allowed under current zoning."

CONCLUSIONS:

1. As argued by DDES staff, the purpose of KCC 19A.080.180 is not difficult to discern. It is summarily expressed in the code section heading as a prohibition on the circumvention of zoning density provisions. In a larger context, consistent with Comprehensive Plan policies it is a tool that helps control urban sprawl in the Rural Area by limiting the effects of a chain of exempt boundary line adjustments and large lot segregations. The source of the problem is the proliferation of small parcels that were created in certain Rural Area neighborhoods decades ago. These parcels, when manipulated by a combination of boundary line adjustments, large lot segregations and the rounding up of fractional lots for density purposes, can result in a land development scheme where the base Rural densities on larger land holdings can be substantially exceeded. KCC 19A.08.180, in combination with other provisions of revised Title 19A, seeks to protect the County's Rural density zoning from being exceeded by means of these evasive strategies.

2. While the purpose of KCC 19A.08.180 is clear, the regulatory mechanism created to achieve this purpose contains certain critical ambiguities that have generated the dispute embodied by this appeal. These ambiguities center upon the meaning to be given to the terms "original" and "subject to" within the ordinance provision, and as well the term "segregation". Because of these ambiguities the historical referents of the process outlined by the section are subject to multiple interpretations, and the relationship between the first and second sentences of the section is unclear.

3. Structurally, the first sentence of KCC 19A.08.180 states the general principle that a legally existing lot may be further divided even though it may have been the product of a prior exempt segregation or boundary line adjustment. The principle ambiguity here surrounds the

term "segregation". Under previously existing KCC Chapter 19, the term "segregation" was used primarily to identify an exempt division of land into parcels exceeding 20 acres each. Under Title 19A, however, the term "segregation" has been redefined to mean a division of land by any legally recognized means, including subdivisions, short plats and binding site plans as well as exempt divisions. KCC 19A.08.180 is awkwardly constructed in that it uses the term "segregation" in both senses. As used within the phrase "legally recognized land segregation" in the first sentence and "original land segregation" in the second sentence, the intended reference is clearly to an exempt large lot segregation in the Title 19 sense and not to the more inclusive meaning adopted within Title 19A. In contrast, the terms "further segregated" in the first sentence and "such further segregation" in the second sentence are employed in the broader sense of referring to any legally recognizable division.

4. Before proceeding further, the record also contains some loose ends that should be resolved. First, we agree with the Appellant that designating as lot L the large easterly tract created within the 1996 boundary line adjustment carries no legally significant consequences based on the fact that under the prior scheme lot L was the 18 square foot sliver. The numbers or letters assigned to lots within a development are entirely arbitrary, and no important legal rights should be affected by that choice. Second, the Appellant spent considerable time in testimony suggesting that in 1996 through clever use of rounding up density procedures the Jack McCann Co. might have platted its existing 12 parcels to create as many as 19 lots and tracts. This testimony is interesting as an intellectual exercise but has no regulatory significance. Finally, the testimony of Mr. Florent and the staff reports submitted for the County Council hearings on the adoption of KCC Title 19A provide historic background to the legislative process, but they do not meet the requirements for qualification as legislative history.

5. The first sentence of KCC 19A.08.180 provides the general rule, then, that any legal lot, no matter how created, may be further divided consistent with applicable density requirements. The second sentence of the section states a limiting case that qualifies the general principle. It says that the legal lot in question may not be further divided if the total number of lots that result will exceed the total number allowed under current zoning "within the external boundaries of the lot subject to the original boundary line adjustment or the total number of lots contained within the external boundary of the parcel subject to the original land segregation". The fundamental question presented by this appeal is what is the precise historical reference for this external boundary determination?

6. Since both the Appellant and DDES appear to agree that the original event in the instant case must either be the 1996 or the 1998 boundary line adjustment, and not the 1997 large lot segregation, our analysis can focus on the boundary line adjustment language exclusively. The Appellant's assertion that the original BLA must necessarily be the most recent 1998 lot line alteration is not supported by the plural form of the regulatory language. The regulatory language deals with lots in the plural and seeks to define an external perimeter boundary that surrounds all of the lots at issue. There is nothing within this language that states or implies that any specific internal configuration of lots within this external boundary is germane. Thus, if the lot under review falls within the external boundaries of the original BLA, it does not matter for purposes of the KCC 19A.08.180 analysis whether any of the current internal lot lines were in existence at that time. The critical regulatory reference for the "subject to" language within the section thus is not the current lot under review but the relevant external boundary.

7. We agree, therefore, with DDES staff that the term "original boundary line adjustment" takes us back in our analysis to the first event in what may be in fact a lengthy series of occurrences. The original boundary line adjustment is the first regulatory event that defined the external boundaries subject to the density analysis. While this determination is certainly fact-sensitive and perhaps not reduceable to a simple formula, it is not as arbitrary and unpredictable as argued by the Appellant. First, the lots must be physically contiguous and under the same or related ownership. Second, the lot subject to the regulatory analysis cannot have been specifically created by a formal long or short subdivision. Third, a close relationship in time among the various exempt actions under review will tend to argue for their relatedness, and conversely a gap of many years between different exempt events would strongly suggest that the earlier actions were for regulatory purposes part of a separate historical series. Finally, while staff seemed uncertain on this point, a change in the base density on the legal lot subject to review should also preclude reaching back to analyze earlier segregations or boundary line adjustments. If the purpose of KCC 19A.08.180 is to protect the integrity of the current zoning density, then it would seem illogical to conclude that the original regulatory event occurred under an earlier less restrictive density scenario. One cannot circumvent a zoning density scheme that does not yet exist.

8. The foregoing construction clarifies the ambiguities latent in the structure of KCC 19.08.180 in a manner that gives full effect to key regulatory terms within the section and carries out its legislative intent. On such basis, one might attempt the following summary interpretation of the requirements of KCC 19A.08.180:

   The terms "original boundary line adjustment" and "original land segregation" refer back to the external boundary of the first exempt adjustment or segregation within a related series of non-platting actions that included the area of the legal lot under review and resulted in the alteration of the boundaries of some or all of the contiguous lots or parcels within this boundary; provided that, the base density of the legal lot under review shall be at the time of the "original" event the same or less than that provided by the current zoning.

9. While we essentially agree with the interpretation of KCC 19A.08.180 promulgated by DDES staff, we are perplexed by its actual application to the short plat application under review. Specifically, staff has determined that the 1996 boundary line adjustment for 157 acres should be analyzed for current density purposes as if it were entirely zoned RA 10. In actual fact, of course, 42.7 acres were zoned Forestry in 1996 and are zoned Forestry now. We are at a loss, therefore, to discern a compelling rationale (or indeed any rationale at all) for not analyzing the density on the 157 acre parcel according to the zoning district ratios in effect in 1996 and now. Although the record is silent in this respect, we assume that the basis for permitting 5 lots within the Forestry zone in the 1996 BLA was simply the fact that 5 lots existed in the Forestry zone at the time of the adjustment and the level of density non-conformity was not being increased.

   But the analysis required by KCC 19A.08.180 is that the total density allowed within the original boundary line adjustment area not exceed that permitted by current zoning. Under current zoning, the 157 acre parcel adjusted in 1996 would allow the creation of 1 non-conforming lot in the Forestry zone and 11 lots on the 115 acres in the RA 10 zone, for a total of 12 lots. Since the date of the 1997 large lot segregation there have been 14 lots on the 157 acre parcel. Accordingly, we see no basis for concluding that any further lots can be created on lot C through the short plat process.

DECISION: The short plat appeal is DENIED.

ORDERED this 2nd day of September, 2003.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 2nd day of September, 2003, to the parties and interested persons of record:

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NOTICE OF RIGHT TO APPEAL

The action of the hearing examiner on this matter shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the issuance of this decision. The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.

MINUTES OF THE AUGUST 26, 2003 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NOS. L02S0015/L02CI003.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Cass Newell, and Kim Claussen, representing the Department; and Nancy Bainbridge Rogers, representing the Appellant, and Terry Wilson, Jeff McCann, Ray Florent and Harry Reinert.

The following exhibits were offered and entered into the record:

Exhibit No. 1	DDES File Nos. L02S0015/L02CI003
Exhibit No. 2	DDES Preliminary Report dated August 26, 2003
Exhibit No. 3	Short Plat and Final Code Interpretation dated May 23, 2003 (denial)
Exhibit No. 4	Statement of Appeal, Carincross & Hemplemann received June 16, 2003
Exhibit No. 5	Application dated May 31, 2002

Exhibit No. 6	Short Plat Map received May 31, 2002
Exhibit No. 7	Assessors Map – Section 5-21-07
Exhibit No. 8	GIS Zoning Map
Exhibit No. 9	DDES Files
a)	L92L0104
b)	L97M0052
c)	L98L0101
Exhibit No. 10	Site Plan L92L0104
Exhibit No. 11	Site Plan L98L0101
Exhibit No. 12	March 30, 1998 Metropolitan King County Council Growth Management Committee Staff Report
Exhibit No. 13	April 6, 1998 Metropolitan King County Council Growth Management Committee Staff Report
Exhibit No. 14	August 17, 1999 Metropolitan King County Council Growth Management Committee Staff Report
Exhibit No. 15	September 28, 1999 Metropolitan King County Council Growth Management Committee Staff Report
Exhibit No. 16	List of Lot Yields
Exhibit No. 17	Ray Florent's sketch of lot yield scenarios

SLS:gao
L02S0015-L02CI003 RPT